



STATE BOARD OF EQUALIZATION

April 18, 1972

[B]
Post Office Box XXXX
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--- ---, California XXXXX

Attention: Mr. [L]
Secretary

Dear Mr. [L]:

Re: [B]
S- -- XX-XXXXXX
S- -- XX-XXXXXX

This is in response to your letter of February 11, 1972 regarding the application of California sales and use taxes to equipment rentals collected through legal action.

[B] ([B]) is in the business of selling, servicing, and renting construction equipment and as a lessor has elected to collect use tax on rental receipts. Equipment rentals are covered by lease agreements under which the lessee agrees to lease the equipment for a guaranteed "minimum" continuous period. Occasionally, a lessee will return leased equipment before the expiration of the guaranteed rental period, and it often happens that the lessee owes rentals to [B] covering both the time he actually used the equipment and the guaranteed rentals for the balance of the "minimum" period during which the equipment is in [B]' yard not actually being used by the lessee or anyone else. [B] in certain cases has been forced to take legal action and has received judgment for all equipment rentals due (full guaranteed rentals). Therefore, [B] receives payment for rental of equipment covering a period of usage by the lessee, and payment of rentals covering a period when the equipment was just parked in [B]' yard.

In regard to the above facts, you ask if [B] should report use tax measured by the amount of the full guaranteed rentals or only those rentals covering periods of actual use by the lessee, with the payment covering periods when the equipment is not actually used by the lessee being nontaxable?

In our opinion, [B] should report tax on the full guaranteed rentals received, that is, the full contract price between [B] and the lessee, regardless of the fact that the lessee chooses to allow the equipment to remain idle in [B]' yard during a portion of the rental period.

We believe that the judgments received by [B] are predicated on the courts finding that [B] and the lessee entered into binding contracts under which the consideration on the part of the lessee

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was the promise to pay the full guaranteed rentals, and the consideration on the part of [B] was to give the use of equipment to lessee for a certain period. In order to give judgment to [B] in the contract action the court must find that [B] has fully performed; or tendered full performance, per the contract; that is, [B] has given the use of the equipment to the lessee for the entire rental period. Once [B] has fully performed or tendered full performance, the lessee cannot change the terms of the contract because he has no further use for the equipment. If having no use for the equipment, the lessee parked it in his own yard or the yard of a third party, it is clear the lessee would be liable for the full rental and such rentals would be taxable. It seems equally clear that if the lessee chooses to park the equipment in [B]' yard, he still owes the full rental and such full rental is still subject to use tax which must be collected by [B].

The tax on leasing sales is basically a use tax on the lessee. In regard to leases, "use" is defined in Section 6009 to include not only possession by the lessee, but also the "...exercise of any right or power over, tangible personal property by a lessee under a lease..." While the lessee does not have the "right" to terminate such a lease by returning the equipment prematurely, the lessee does have the "right" not to put the equipment to its normal use, and the "power" to park it in [B]' yard. By so exercising his rights and powers over the equipment, the lessee does not terminate the lease, but continues as the lessee liable for rentals for the entire rental period. The lessee retains the right to use the equipment for the entire period, and the court-enforced payments for the rights are subject to tax.

Summarily, since [B] has elected to collect and report tax on rental receipts, all rental receipts received under the guaranteed rental contracts are subject to tax, including amounts received as the result of court judgments enforcing the lease contract.

Very truly yours,

Donald J. Hennessy
Legal Counsel

DJH:lb